## REMARKS

The specification has been corrected, Claim 17 has been cancelled, and Claims 1, 18, 21, 25, 27, 28, 30, 33 and 34 have been amended, to place the above-referenced application in condition for allowance. In view of these amendments and the following reasoning for allowance, the applicant hereby respectfully requests further examination and reconsideration of the subject application.

### The Objection to the Drawings

The drawing were objected to for containing reference number not contained in Fig. 1, and for not having reference numbers that were cited in the specification. It is noted that the reference numbers found in the drawings refer to the same elements as the numbers recited in the specification that were not in the figure. These informalities have been corrected by amending the specification to recite the correct reference numbers as depicted in Fig. 1. Accordingly, the applicants respectfully request that the correction be entered in the specification and the objection to the drawings be withdrawn.

### The Objection to the Specification

The specification was objected to for a misspelling of the word "web". This misspelling has been corrected. Accordingly, the applicants respectfully request that the correction be entered and the objection to the specification be withdrawn.

### The Section 112, Second Paragraph, Rejection of Claim 1

Claim 1 was rejected under 35 USC 112, second paragraph, as being indefinite. It is believed that the foregoing amendment to the claim has clarified

any indefiniteness that existed in the original claim language.

Specifically, the Examiner stated the phrase "the requested layer data" lacked antecedent basis. In response, Claim 1 was amended to add the phrase "wherein the base quality version of the program comprises layer data of a layered unicast", thereby providing the antecedent basis for the layer data term.

It is believed the amended claim now fulfills the requirements of 35 USC 112, second paragraph, as it particularly point out and distinctly claims the subject matter that the applicant regards as the invention. Therefore, it is respectfully requested that the rejection of Claim 1 be reconsidered.

## The Section 102 Rejection of Claims 1-27 and 30-34

Claims 1-27 and 30-34 were rejected under 35 USC 102(e) as being anticipated by Tillman et al., U.S. Patent No. 6,496,980 (hereinafter Tillman). The Office Action asserts that Tillman discloses each and every element of the applicant's claimed invention. In response, the applicant has amended the rejected claims to make them novel over the teachings of this reference.

More particularly, independent Claims 1, 25, 27, 30, 33 and 34 were amended to specify that the base quality version of the audio and/or video program includes "layer data of a layered unicast having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy" and that requesting the base quality version of the program includes "**requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network**". Tillman does not teach this added feature.

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Granted, this feature is essentially the subject matter once claimed in now cancelled Claim 17, and the Examiner rejected that claim as being anticipated by Tillman. However, nowhere in the cited reference, including in the sections pointed out by the Examiner (i.e., col. 6, lines 15-40, lines 53-67, col. 7, lines 1-3, lines 36-50, col. 9, lines 11-20 and lines 44-57), is the feature found. Rather, Tillman expressly teaches that the original video data is received in the form of a base layer of the video stream only and does not include any enhancement layers (e.g., col. 7, lines 36-37).

A prima facie case of anticipation is established only when the Examiner can show that the cited reference teaches each of the claimed elements of a rejected claim. In this case, the Examiner cannot show that the Tillman reference teaches the claimed feature whereby **requesting the base quality version of the program includes requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network.** Thus, the rejected claims recite a feature that is not taught in cited art, and as such a prima facie case of anticipation cannot be established. It is, therefore, respectfully requested that the rejection of Claims 1-27 and 30-34 be reconsidered based on the novel claim language:

> " requesting a base quality version of the program from a server over the network, wherein the base quality version of the program comprises layer data of a layered unicast having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy, and wherein requesting a base quality version of the program from a server over the network

comprises requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network."

## The Section 103(a) Rejection of Claims 28 and 29

Claims 28 and 29 were rejected under 35 USC 103(a) as being unpatentable over Tillman in view of Chaddha, U.S. Patent No. 6,266,817. It is contended in the Office Action that the combined teachings of Tillman and Chaddha teach all the elements of the rejected claims, and that it would have been obvious to incorporate the Chaddha teachings into Tillman to produce the applicants' claimed invention. In response, the applicant has amended the rejected claims to make them non-obvious over the cited combination.

More particularly, independent Claim 28 was amended in the same way as the other independent claims to specify that the base quality version of the audio and/or video program includes "layer data of a layered unicast having hierarchically related layers in that the lowest level layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy" and that requesting the base quality version of the program includes **"requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network"**. As shown previously, Tillman does not teach this feature. Chaddha is also lacking any teaching or suggestion of the feature.

In order to deem the applicants' claimed invention unpatentable under 35 USC 103, a prima facie showing of obviousness must be made. To make a prima facie showing of obviousness, all of the claimed elements of an applicants' invention

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must be considered, especially when they are missing from the prior art. If a claimed element is not taught in the prior art and has advantages not appreciated by the prior art, then no prima facie case of obviousness exists. The Federal Circuit court has stated that it was error not to distinguish claims over a combination of prior art references where a material limitation in the claimed system and its purpose was not taught therein (*In Re Fine*, 837 F.2d 107, 5 USPQ2d 1596 (Fed. Cir. 1988)).

In this case, the cited combination of Tillman and Chaddha does not teach the applicants' claimed feature whereby **requesting the base quality version of the program includes requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network**. This has the advantage of maximizing the quality of the base quality version of the program. Thus, the applicant now claims a feature not taught in the cited combination, which has advantages not recognized therein. Accordingly, no prima facie case of obviousness can be established in accordance with the holding of *In Re Fine*. This lack of prima facie case of obviousness means that the rejected claims are now patentable under 35 USC 103 over Tillman in view of Chaddha. As such, it is respectfully requested that the rejection of Claims 28 and 29 be reconsidered based on the non-obvious claim language quoted previously.

## Summary

In summary, it is believed that the specification and the remaining claims are in condition for allowance. Accordingly, reconsideration of the rejection of Claims 1-16 and 18-34, and withdrawal of the objections to the specification, are respectfully

requested. In addition, allowance of all the claims at an early date is courteously solicited.

Respectfully submitted,

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